

## 1991 LAWS OF MARYLAND

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MARYLAND, Sct.:

At a Session of the General Assembly of Maryland, begun and held in the City of Annapolis on the Ninth Day of January, 1991, and Ending on the Eighth Day of April, 1991, William Donald Schaefer, being Governor of the State, the following laws were enacted, to wit:

### CHAPTER 1

(Senate Bill 162)

AN ACT concerning

#### Abortion

FOR the purpose of revising certain statutory provisions relating to abortion; authorizing a physician to perform an abortion on an unmarried minor without notice to a parent or guardian of the minor if, in the professional judgment of the physician, the minor is mature and capable of giving informed consent or notice would not be in the best interest of the minor; prohibiting a physician from giving notice to a parent or guardian if the minor decides not to have the abortion; repealing a certain provision of law related to certain information that must be provided prior to an abortion; repealing certain provisions of law related to abortion referral services; clarifying a provision of law related to referral services; requiring that an abortion be performed by a licensed physician; providing that the State may not interfere with the decision of a woman to terminate a pregnancy if certain conditions exist and under certain circumstances; specifying that the State may not interfere with a woman's decision to terminate a pregnancy at any time if certain circumstances exist; providing a certain immunity for a physician under certain circumstances; authorizing the Department of Health and Mental Hygiene to adopt certain regulations related to the termination of a human pregnancy; repealing a provision of law related to the imposition of certain penalties against certain persons who violate certain provisions of law related to the termination of a human pregnancy; repealing a provision of law related to certain disciplinary actions against a licensed physician for performing an abortion outside a licensed hospital; defining certain terms; making provisions of this Act severable; specifying that if a certain provision of this Act is petitioned to referendum and rejected by the voters, such rejection does not affect other provisions of the Act unless the other provisions are also petitioned to referendum and rejected by the voters; and generally relating to abortion.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics* denote opposite chamber/conference committee amendments.

BY repealing and reenacting, with amendments,

Article – Health – General

Section 20-103; and 20-214 to be under the amended part “Part IV. Effect of Refusal to Participate”

Annotated Code of Maryland

(1990 Replacement Volume and 1990 Supplement)

BY repealing

Article – Health – General

Section 20-201 through 20-206 and the part “Part I. Abortion Referral Services”; and 20-208, 20-210, and 20-211

Annotated Code of Maryland

(1990 Replacement Volume and 1990 Supplement)

BY adding to

Article – Health – General

Section 20-208 and 20-209 to be under the amended part “Part II. Abortion Procedures”

Annotated Code of Maryland

(1990 Replacement Volume and 1990 Supplement)

BY repealing and reenacting, with amendments,

Article – Health Occupations

Section 14-404(a)(23), (24), (25), (26), (27), (28), (29), and (30)

Annotated Code of Maryland

(1991 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article – Health – General**

20-103.

(a) Except as provided in subsections (b) and (c) of this section, a physician may not perform an abortion on an unmarried minor unless the physician first gives notice to a parent or guardian of the minor.

(b) The physician may perform the abortion without notice to a parent or guardian if:

(1) The minor does not live with a parent or guardian; and

(2) A reasonable effort to give notice to a parent or guardian is unsuccessful.

(c) (1) The physician may perform the abortion, without notice to a parent or guardian of a minor if, in the professional judgment of the physician[,]:

(I) [notice] NOTICE to the parent or guardian may lead to physical or emotional abuse of the minor;

(II) THE MINOR IS MATURE AND CAPABLE OF GIVING INFORMED CONSENT TO AN ABORTION; OR

(III) NOTIFICATION WOULD NOT BE IN THE BEST INTEREST OF THE MINOR.

(2) The physician is not liable for civil damages or subject to a criminal penalty for a decision under this subsection not to give notice.

(d) The postal receipt that shows an article of mail was sent by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the last known address of a parent or guardian and that is attached to a copy of the notice letter that was sent in that article of mail shall be conclusive evidence of notice or a reasonable effort to give notice, as the case may be.

(E) A PHYSICIAN MAY NOT PROVIDE NOTICE TO A PARENT OR GUARDIAN IF THE MINOR DECIDES NOT TO HAVE THE ABORTION.

[Part I. Abortion Referral Services]

[20-201.

A person may not engage in or advertise any abortion referral service that is carried on for profit and includes the referral or recommendation of any individual to a physician, hospital, health-related facility, or dispensary.]

[20-202.

A physician, hospital, health-related facility, or dispensary may not make an agreement with an abortion referral service located in or doing business in another state if the abortion referral service would be prohibited under § 20-201 of this subtitle if the service were located in or doing business in this State.]

[20-203.

A person may not operate any abortion referral service unless the service is registered with the Department.]

[20-204.

A person who engages in any abortion referral service may not accept, solicit, or divide any fee received by a physician, hospital, health-related facility, or dispensary that performs or induces an abortion on any individual brought, recommended, or referred to that physician, hospital, health-related facility, or dispensary.]

[20-205.

The Department shall adopt rules and regulations for abortion referral services, including medical standards and guidelines for referral procedure and training for the staff.]

[20-206.

A person who violates any provision of Part I of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 1 year or both.]

[20-208.

(a) No person shall terminate or attempt to terminate or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth, except that a physician licensed by the State of Maryland may terminate a human pregnancy or aid or assist or attempt a termination of a human pregnancy if said termination takes place in a hospital accredited by the Joint Commission for Accreditation of Hospitals and licensed by the State Board of Health and Mental Hygiene and if one or more of the following conditions exist:

(1) Continuation of the pregnancy is likely to result in the death of the mother;

(2) There is a substantial risk that continuation of the pregnancy would gravely impair the physical or mental health of the mother;

(3) There is substantial risk of the birth of the child with grave and permanent physical deformity or mental retardation;

(4) The pregnancy resulted from a rape committed as a result of force or bodily harm or threat of force or bodily harm and the State's Attorney of Baltimore City or the county in which the rape occurred has informed the hospital abortion review authority in writing over his signature that there is probable cause to believe that the alleged rape did occur.

(b) In no event shall any physician terminate or attempt to terminate or assist in the termination or attempt at termination of a human pregnancy otherwise than by birth unless all of the following conditions exist:

(1) Not more than twenty-six weeks of gestation have passed (except in the case of a termination pursuant to subsection (a)(1) or where the fetus is dead); and

(2) Authorization therefor has been granted in writing by a hospital abortion review authority appointed by the hospital.

(c) The hospital abortion review authority shall keep written records of all requests for authorization and its action thereon. An annual report of the therapeutic abortions performed in Maryland shall be made by the director of the hospital and its governing board. Such reports shall include the number of requests, authorizations and performances, the grounds upon which such authorizations were granted, and the procedures employed to cause the abortions and such reports shall be forwarded to the Joint Commission on Accreditation of Hospitals and the State Board of Health and Mental Hygiene for the purpose of insuring that adequate and proper procedures are being followed in accredited hospitals. Such information, which is not subject to the

physician-patient privilege, may be made available to the public. Said reports shall not include the names of the patients aborted.]

## Part II. Abortion [Restrictions] PROCEDURES

20-208.

AN ABORTION MUST BE PERFORMED BY A LICENSED PHYSICIAN.

20-209.

(A) IN THIS SECTION, "VIABLE" MEANS THAT STAGE WHEN, IN THE BEST MEDICAL JUDGMENT OF THE ATTENDING PHYSICIAN BASED ON THE PARTICULAR FACTS OF THE CASE BEFORE THE PHYSICIAN, THERE IS A REASONABLE LIKELIHOOD OF THE FETUS'S SUSTAINED SURVIVAL OUTSIDE THE WOMB.

(B) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBTITLE, THE STATE MAY NOT INTERFERE WITH THE DECISION OF A WOMAN TO TERMINATE A PREGNANCY:

(1) BEFORE THE FETUS IS VIABLE; OR

(2) AT ANY TIME DURING THE WOMAN'S PREGNANCY, IF:

(I) THE TERMINATION PROCEDURE IS NECESSARY TO PROTECT THE LIFE OR HEALTH OF THE WOMAN; OR

(II) THE FETUS IS AFFECTED BY GENETIC DEFECT OR SERIOUS DEFORMITY OR ABNORMALITY.

(C) THE DEPARTMENT MAY ADOPT REGULATIONS THAT:

(1) ARE BOTH NECESSARY AND THE LEAST INTRUSIVE METHOD TO PROTECT THE LIFE OR HEALTH OF THE WOMAN; AND

(2) ARE NOT INCONSISTENT WITH ESTABLISHED MEDICAL PRACTICE.

(D) THE PHYSICIAN IS NOT LIABLE FOR CIVIL DAMAGES OR SUBJECT TO A CRIMINAL PENALTY FOR A DECISION TO PERFORM AN ABORTION UNDER THIS SECTION MADE IN GOOD FAITH AND IN THE PHYSICIAN'S BEST MEDICAL JUDGMENT IN ACCORDANCE WITH ACCEPTED STANDARDS OF MEDICAL PRACTICE.

[20-210.

(a) A person is guilty of a misdemeanor if the person:

(1) Sells or gives, or causes to be sold or given, any drug, medicine, preparation, instrument, or device for the purpose of causing, inducing, or obtaining a termination of human pregnancy other than by a licensed physician in a hospital accredited by the Joint Commission for Accreditation of Hospitals and licensed by the State Board of Health and Mental Hygiene; or

(2) Gives advice, counsel, or information for the purpose of causing, inducing, or obtaining a termination of human pregnancy other than by such physician in such a hospital; or

(3) Knowingly assists or causes by any means whatsoever the obtaining or performing of a termination of human pregnancy other than by such physician in such a hospital.

(b) Any person who violates any provision of this section, upon conviction, is subject to a fine of not more than five thousand dollars for each offense, or to imprisonment for not more than three years, or both such fine and imprisonment. The penalties in this section are in addition to and not in substitution for any other penalty or penalties applicable to particular classes of persons under other laws of this State. ]

[20-211.

(a) This section does not apply if the attending physician certifies that an abortion is necessary to save the life of the woman.

(b) Before a physician performs an abortion, the woman undergoing the procedure shall be advised of the extent to which:

(1) Financial and other material assistance to carry the pregnancy to a normal delivery is available;

(2) Financial and other material assistance to raise and support her child is available; and

(3) Assistance from a licensed and regulated adoption agency is available if she chooses not to keep the baby.

(c) In cooperation with the Department of Health and Mental Hygiene, the Department of Human Resources shall prepare annually, periodically update, and publish a list of federal, State, and private sources of the types and extent of assistance referred to in subsection (b) of this section, and shall distribute this published information to each hospital, clinic, physician's office, and other facility where an abortion is performed.

(d) The signed document, of a woman who seeks an abortion, indicating that she has been counseled concerning the published information referred to in subsection (c) of this section is evidence that the requisite information was given to the woman. The signed document shall become part of the medical record.

(e) A person who willfully violates any provision of subsection (b) of this section is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$500.]

## Part IV. Effect of Refusal to Participate [or Refer]

20-214.

(a) (1) A person may not be required to perform or participate in[, or refer to any source for,] any medical procedure that results in artificial insemination, sterilization, or termination of pregnancy.

(2) The refusal of a person to perform or participate in[, or refer to a source for,] these medical procedures may not be a basis for:

- (i) Civil liability to another person; or
- (ii) Disciplinary or other recriminatory action against the person.

(b) (1) A licensed hospital, hospital director, or hospital governing board may not be required[:

(i) To] TO permit, within the hospital, the performance of any medical procedure that results in artificial insemination, sterilization, or termination of pregnancy[; or

- (ii) To refer to any source for these medical procedures].

(2) The refusal to permit [or to refer to a source for] these procedures may not be grounds for:

- (i) Civil liability to another person; or
- (ii) Disciplinary or other recriminatory action against the person by this State or any person.

(c) (1) The refusal of an individual to submit to or give consent for an abortion or sterilization may not be grounds for loss of any privileges or immunities to which the individual otherwise would be entitled.

(2) Submitting to or granting consent for an abortion or sterilization may not be a condition precedent to the receipt of any public benefits.

(D) A PERSON WHO IS NOT A HEALTH CARE PROVIDER LICENSED OR OTHERWISE AUTHORIZED TO PROVIDE HEALTH CARE UNDER THE HEALTH OCCUPATIONS ARTICLE IS NOT REQUIRED TO REFER AN INDIVIDUAL TO ANY PERSON FOR ANY MEDICAL PROCEDURE THAT RESULTS IN ARTIFICIAL INSEMINATION, STERILIZATION, OR TERMINATION OF PREGNANCY.

## Article – Health Occupations

14-404.

(a) Subject to the hearing provisions of § 14-405 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

(23) [Performs an abortion outside a licensed hospital;

(24)] Willfully submits false statements to collect fees for which services are not provided;

[(25)] (24) Was subject to investigation or disciplinary action by a licensing or disciplinary authority or by a court of any state or country for an act that would be grounds for disciplinary action under this section and the licensee:

(i) Surrendered the license issued by the state or country to the state or country; or

(ii) Allowed the license issued by the state or country to expire or lapse;

[(26)] (25) Knowingly fails to report suspected child abuse in violation of § 5-704 of the Family Law Article;

[(27)] (26) Fails to educate a patient being treated for breast cancer of alternative methods of treatment as required by § 20-113 of the Health – General Article;

[(28)] (27) Sells, prescribes, gives away, or administers drugs for illegal or illegitimate medical purposes;

[(29)] (28) Fails to comply with the provisions of § 12-102 of this article; or

[(30)] (29) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive.

SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 3. AND BE IT FURTHER ENACTED, That if any portion of the amendments to § 20-103 of the Health – General Article made by this Act is petitioned to referendum and rejected by the voters, such rejection does not affect other provisions of this Act and the remaining provisions shall be given effect unless they too are petitioned to referendum and rejected by the voters.

SECTION 3. 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 1991.

Approved February 18, 1991.